



January 19, 2001

Mr. John Steiner
Division Chief
City of Austin-Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2001-0205

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 143345.

The City of Austin (the "city") received a request for information relating to certain specified items of police equipment, including (1) records relating to the acquisition of the equipment, its cost, dates of purchase, and quantities of the equipment possessed by the city; (2) training and/or operations manuals, instructions, policies, and procedures pertaining to the maintenance and use of the equipment; (3) communications with other law enforcement agencies regarding the use of such equipment for crowd control or other reasons; and (4) internal communications about the use of such equipment, particularly during a specified four-day period in October, 2000. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the representative samples of information you submitted.¹ We also received and have considered the comments which the requestor submitted to this office.

¹This letter ruling assumes that the representative samples of information you submitted are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Initially, we note that some of the submitted information is subject to required public disclosure under section 552.022 of the Government Code. Section 552.022(a) provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(3), (5) (emphasis added). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects the interests of the governmental body and may be waived. *See* Open Records Decision No. 177 (1977) (construing statutory predecessor). As such, section 552.108 is not "other law," under section 552.022(a), that makes any of the information encompassed by section 552.022(a) expressly confidential. *See* Open Records Decision No. 665 at 2 n.5 (2000) (addressing distinction between mandatory and discretionary exceptions to disclosure). Furthermore, you do not claim that any of the submitted information is expressly confidential under other law. We have marked the information that the city must release under section 552.022.

Next, we address your claim that the rest of the requested information is excepted from disclosure under section 552.108, the "law enforcement exception." You point out that section 552.108 "excepts from disclosure law enforcement agency records that deal with the detection, investigation, or prosecution of crime." A governmental body that claims an exception to disclosure under section 552.108 must provide a sufficient explanation, if the responsive information does not do so on its face, of how and why section 552.108 is applicable. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this instance, you do not assert that the requested information pertains either to a pending investigation or prosecution or to a closed case that did not result in a conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(1), (2). Thus, you have not demonstrated that the information in question may be withheld from disclosure under either of those provisions of section 552.108.

Section 552.108 also excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (stating that statutory predecessor protected records held by a law enforcement agency if their release would interfere with law enforcement and crime prevention). On previous occasions, this office has concluded that section 552.108 protects certain kinds of law enforcement information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding a police department’s use of force policy), 508 (1988) (information relating to future transfers of prisoners could be protected), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment), 127 (1976) (list of persons who entered or left Governor’s Mansion).

In this instance, you inform this office that the requested information pertains to the Crowd Management Team (the “CMT”), which you state is a specialized unit of the Austin Police Department. You explain that the CMT’s “role is to respond to large-scale acts of violence or potential violence with the ultimate goal of minimizing or eliminating acts of violence to persons or property.” You also state that the CMT protects dignitaries and governmental officials in some situations. You assert that the release of information relating to the CMT would unduly interfere with law enforcement efforts. In your estimation:

If a suspect was intent on causing harm to other citizens or property, or to police officers, and knew exactly what type of equipment that a police officer possessed, or the techniques that he was to utilize, the suspect would take extra precautions to avoid or defeat these devices and techniques. This would hinder a law enforcement officer’s ability to arrest persons, maintain control in riot situations and to prevent injury to the officer himself.

The release of purchasing information, including sources, specifications, and quantities, would assist a person intent on criminal activity to avoid detection or arrest, and to develop counter-tactics. Such information would allow a person to know the performance capabilities of devices, and of the police department itself. The release of quantities of . . . certain items possessed by the police department could allow a person to determine the size of specialized teams and thereby to develop tactics to defeat the mission of law enforcement.

You also state that “[t]he enclosed records are self-explanatory.” We have carefully examined that information and have considered your arguments. We conclude that you have demonstrated that the release of a portion of the submitted information, which we have marked, would interfere with law enforcement and crime prevention. Therefore, the city may

withhold that information under section 552.108(b)(1) of the Government Code. *See also* Open Records Decision No. 636 (1995). As you have not established, however, that the rest of the information at issue is excepted from disclosure under section 552.108, it must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

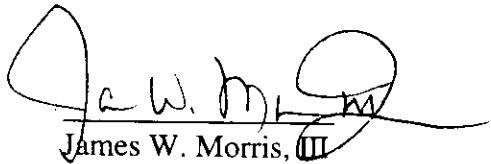
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. W. Morris, III', with a large, stylized flourish extending from the end of the signature.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/seg

Ref: ID# 143345

Encl: Submitted documents

cc: Austin Independent Media Center
c/o Stefan Wray
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Austin, Texas 78703
(w/o enclosures)